

CONTRACT #8
RFS # 337.03-020

**Department of Labor &
Workforce Development**

VENDOR:
**The Workers' Compensation
Research Institute (WCRI)**



**STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**PHIL BREDESEN
GOVERNOR**

**Andrew Johnson Tower
710 James Robertson Pkwy, 8th FLOOR
Nashville, TN 37243-0655
(615) 741-2582**

**JAMES G. NEELEY
COMMISSIONER**

August 13, 2007

M. D. Goetz, Jr., Commissioner
Department of Finance and Administration
State Capitol
Nashville, TN 37243

REF: 337.07-020 Non Competitive Contract

Dear Mr. Goetz:

Outlined below is our justification for a Non Competitive Contract with The Workers' Compensation Research Institute.:

- 1) The contract will begin on 10/15/07 end on 10/14/10.
- 2) As the cost of workers' compensation premiums increase and the outcome of workers' compensation reforms legislation is evaluated, researched information on workers' compensation in Tennessee compared with other states must be sought. The department does not have the statistical data on other states in order to perform comparisons to examine the effectiveness of legislative changes. The Workers' Compensation Research institute (WCRI) can help policymakers and other interested parties including the legislature benchmark state system performance, assess the effectiveness of the law changes and identify important trends. The comparisons are more meaningful than those commonly seen because they measure how different systems would perform if a similar set of claims were dropped into each state system. Therefore, the Department needs to acquire this service to measure the status of the workers' compensation system in Tennessee as compared to other states.
- 3) We have attached a copy of the Request: Non-Competitive Contract form, copy of the proposed contract and a copy of the contract summary sheet.

Based on the above justification, I am requesting your approval of this non-competitive contract.

Sincerely,

James G. Neeley, Commissioner
JGN: HS: mho

RECEIVED
AUG 13 2007
FISCAL REVIEW

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	337.03-020-08	
2) State Agency Name :	Labor and Workforce Development	
3) Service Caption :	Contractor will provide research and benchmark the performance of workers' compensation systems in no less than 12 states.	
4) Proposed Contractor :	The Workers' Compensation Research Institute (WCRI)	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	10/15/07	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	10/14/10	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	585,000.00	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state	
	<input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
<p>The Contractor will provide and benchmark the performance of workers' compensation systems in 12 states equaling at least 50 percent of the nation's benefits payments. The Contractor will report trend of the same performance measures and focus on Tennessee to identify the major differences between other states and within the state across time.</p>		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
<p>As the cost of workers' compensation premiums increase and the outcome of workers' compensation reforms legislation is evaluated, researched information on workers' compensation in Tennessee compared with other states must be sought. The department does not have the statistical data on other states in order to perform comparisons to examine the effectiveness of legislative changes. The Workers' Compensation Research Institute (WCRI) can help policymakers and other interested parties including the legislature benchmark state system performance, assess the effectiveness of the law changes and identify important trends. The comparisons are more meaningful than those commonly seen because they measure how different systems would perform if a similar set of claims were dropped into each state system. Therefore, the Department needs to acquire this service to measure the status of the workers' compensation system in Tennessee as compared to other states.</p>		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :		
<p>Services have been bought from this Contractor since FY 04 on a noncompetitive procurement method.</p>		
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (<u>not</u> required if proposed contractor is a state education institution)		

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Workers' Compensation Research Institute is an independent, no-for-profit research organization providing quality, objective information about public policy issues involving workers' compensation systems. Organized in 1983 the Institute's work benefits public officials, employers, insurers, injured workers, organized labor and others affected by workers' compensation systems across the United States. The Institute's work takes several forms: research studies of major issues, studies of individual state systems, studies of states that have undergone major legislative changes, research briefs and presentations.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

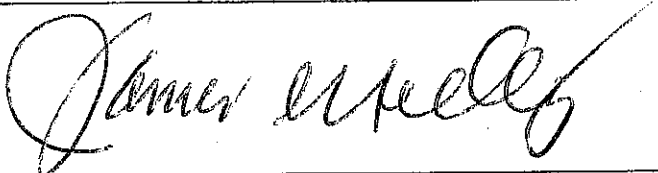
The Department of Labor and Workforce Development reviewed studies by several other organizations including the National Council on Workers' Compensation and believes data and the methodology used to interpret the data by WCRI in the CompScope Benchmark: Multistate Comparisons is the most complete and meaningful comparison available. Based on experience with Tennessee data and expertise in benchmarking workers' compensation systems we believe that the State's best interest is served through sole source procurement of this service.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

This request for a non-competitive authority is based on several factors. WCRI included Tennessee in the research publication, *CompScope Benchmarks: Multistate Comparisons 1994-2006*, and is familiar with issues of interests to policy makers in Tennessee. Second, *CompScope* provided specific data to the Executive Branch and the Legislative Branch of Tennessee government by which system cost drivers were identified. Third, WCRI has the trademark for *CompScope* which created standard definitions for the data within and across jurisdictions and over time which materially enhance comparability by adjusting the measures for interstate differences in waiting jurisdictions and over time which materially enhance comparability by adjusting the measures for interstate differences in waiting periods, injury mix, industry mix, and wage levels. Fourth, data is representative of each state system, including claims from private insurers, state funds, self-insurers, and residual markets. Fifth, methodology serves to isolate the differences in performance that are due to system design and implementation from the differences that are due to interstate variations. Sixth, *CompScope* data represents more than fifty percent of the nation's benefit payments and over fifty percent of Tennessee's benefit payments.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Date

8/13/07

Agency Head Signature

CONTRACT SUMMARY SHEET

070407

RFS #				Contract #			
337.03-020-08							
State Agency				State Agency Division			
Labor and Workforce Development				Worker's Compensation			
Contractor Name				Contractor ID # (FEIN or SSN)			
The Workers' Compensation Research Institute (WCRI)				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 36326428500			
Service Description							
The Contractor will provide research and benchmark the performance of the workdr's compensation systems in 12 states.							
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #	
10/15/07		10/14/2010		Vendor			
Mark Each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
337.03		302		083		11	
FY		State		Federal		Interdepartmental	
08		\$ 195,000.00					
09		\$ 195,000.00					
10		\$ 195,000.00					
TOTAL:		\$ 585,000.00		\$ -		\$ 585,000.00	
— COMPLETE FOR AMENDMENTS ONLY —				State Agency Fiscal Contact & Telephone #			
FY		Base Contract & Prior Amendments		THIS Amendment ONLY		Melvin O'Neal 532-1071	
TOTAL:		\$ -		\$ -			
End Date							
Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)							
<input type="checkbox"/> African American		<input type="checkbox"/> Person w/ Disability		<input type="checkbox"/> Hispanic		<input type="checkbox"/> Small Business	
<input type="checkbox"/> Asian		<input type="checkbox"/> Female		<input type="checkbox"/> Native American		<input type="checkbox"/> NOT Minority/Disadvantaged	
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input type="checkbox"/> RFP		<input type="checkbox"/> Competitive Negotiation*		<input type="checkbox"/> Alternative Competitive Method*			
<input checked="" type="checkbox"/> Non-Competitive Negotiation*		<input type="checkbox"/> Negotiation w/ Government (ID,GG,GU)					
* Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)							

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
AND
THE WORKERS' COMPENSATION RESEARCH INSTITUTE**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and The Workers' Compensation Research Institute, hereinafter referred to as the "Contractor," is for the provision of providing research and benchmarking the performance of workers' compensation systems, as further defined in the "SCOPE OF SERVICES."

The Contractor is a non-profit organization.
Contractor Federal Employer Identification: 363264285
Contractor Place of Incorporation or Organization: Illinois.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. Purpose: The Contractor will provide research and benchmark the performance of workers' compensation systems in 10-12 states equaling at least 50 percent of the nation's benefit payments. (CompScope™ report).
- A.3. The Contractor will provide benchmarks of the following aspects of system performance, both interstate comparisons and trends:
 - a. Time from injury to notice of injury and first payment
 - b. Average total cost per claim and benefit payments (medical and indemnity benefits) per claim
 - c. Vocational rehabilitation use and costs
 - d. Benefit delivery expenses (litigation and medical cost containment) per claim
 - e. Defense attorney involvement
 - f. Duration of disability
 - g. Claim closure patterns
- A.4. The Contractor is not limited to the benchmarks in Section A.3., but may include additional aspects of system performance as determined by both parties.
- A.5. The Contractor shall use data adjusted for interstate differences in injury and industry mix and wage levels.
- A.6. The Contractor will report trends of the same performance measures and focus on Tennessee to identify the major differences between other states and within the state across time.
- A.7. The Contractor will provide benchmarks in an electronic copy to the Governor, the Commissioner of Labor and Workforce Development, the Commissioner of Finance and Administration, the chairman and members of the Workers' Compensation Advisory Council, and the chairman and members of the Workers' compensation Legislative Oversight Committee.
- A.8. The Contractor will provide explanations about the findings of the Tennessee ComScope Report for each edition, as requested by the State of Tennessee, up to 10 hours during each contract year.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on 10-15-07 and ending on 10/14/10. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed five hundred eighty five thousand (\$585,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. **Compensation Firm.** The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Delivery of draft report on or before 10/15/07	\$ 125,000.00
Presentation of findings at WCRI Advisory Committee Meeting on or before 12/01/07	\$ 60,000.00
Delivery of final published report on or before 3/31/08	\$ 10,000.00
Delivery of status report on or before 07/30/08	\$ 125,000.00
Delivery of draft report on or before 8/30/08	\$ 60,000.00
Delivery of final published report on or before 3/31/09	\$ 10,000.00
Delivery of status report on or before 07/30/09	\$ 125,000.00
Delivery of draft report on or before 8/30/09	\$ 60,000.00
Delivery of final published report on or before 3/31/10	\$ 10,000.00

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

710 James Robertson Parkway, 8th Floor, Nashville, TN 37246-0655

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Labor and Workforce Development, Employment and Workforce Development;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall

neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Sue Ann Head, Administrator
Department of Labor and Workforce Development
710 James Robertson Parkway
Nashville, TN 37243-0655
SueAnn.Head@state.tn.us
Telephone # 615 741-8384
FAX # 615 253-5266

The Contractor:

Richard Victor, Executive Director
Workers' Compensation Research Institute
955 Massachusetts Avenue
Cambridge, MA 02139
Telephone # 617 661-9274
FAX # 617 661-9284

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

IN WITNESS WHEREOF:

THE WORKERS' COMPENSATION RESEARCH INSTITUTE:

CONTRACTOR SIGNATURE

DATE

Richard Victor, Executive Director

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

James G. Neeley, Commissioner

DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER: 337.03-020	
CONTRACTOR LEGAL ENTITY NAME:	The Workers' Compensation Research Institute
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	363264285

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Rep. Charles Curtiss, Chairman
Representatives

Harry Brooks Mary Pruitt
Curt Cobb Donna Rowland
Dennis Ferguson David Shepard
Frank Niceley Curry Todd
Craig Fitzhugh, *ex officio*
Speaker Jimmy Naifeh, *ex officio*

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Senators

Mae Beavers David Fowler
Jim Bryson Steve Southerland
Steve Cohen
Douglas Henry, *ex officio*
Lt. Governor John S. Wilder, *ex officio*

M E M O R A N D U M

TO: The Honorable Dave Goetz, Commissioner
 Department of Finance and Administration

FROM: Charles Curtiss, Chairman
 Don McLeary, Vice-Chairman

DATE: February 14, 2006

SUBJECT: **Contract Comments**
 (Contract Services Subcommittee Meeting 2/13/06)

RFS# 337.03-015

Department: Labor and Workforce Development

Contractor: Workers' Compensation Research Institute (WCRI)

Summary: This vendor provides research data and information to assist the Department in measuring the performance of Workers' Compensation in Tennessee. This amendment extends the current contract for one additional year through March 31, 2007.

Maximum liability: \$195,000

Maximum liability with amendment: \$390,000

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment with the stipulation that the amendment be revised to include the additional benchmarks verbally agreed to by the contractor.

cc: The Honorable James G. Neeley, Commissioner
 Mr. Robert Barlow, Director, Office of Contracts Review